

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

BRADLEY HODGE,)	
)	
Petitioner,)	
)	
v.)	No. 4:12CV02191 ERW
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before the Court upon petitioner's motion for reconsideration of this Court's dismissal of his writ of audita querela.

In a lengthy Memorandum and Order issued on March 21, 2013, this Court denied petitioner's motion, both on procedural grounds, as well as on the merits of petitioner's arguments. In his motion for reconsideration petitioner extensively relies on a case out of the Western District of Washington, Kessack v. United States, No. CV-05-1828-TSZ, 2008 WL 189, 679 (W.D. Wash. Jan. 18, 2008), to argue that the dismissal of his application for writ of audita querela should be reversed.

In Kessack, the District Court granted a writ of audita querela and ordered the resentencing of a petitioner who presented issues under United States v. Booker, 543 U.S. 220 (2005). However, district courts in other circuits that have faced similar audita querela petitions since Kessack have declined to follow the court's reasoning on the

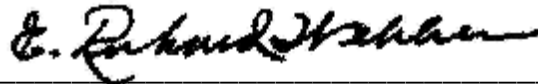
availability of a writ of audita querela. See, e.g., Smith v. United States, No. 4:95CR19-05JLH, 2009 WL 3003938 (E.D.Ark. Sept. 15, 2009); Neuhausser v. United States, No. 1:98-CR-48, 2009 WL 2883742 (S.D.Ohio Sept. 2, 2009); Luna v. United States, No. CV F 95-5036 AWI, 2009 WL 2351716 (E.D.Cal. July 29, 2009); Gamboa v. United States, No. CR93-2090(JET)FDB, 2009 WL 1175315 (W.D. Wash. April 29, 2009); United States v. Loveless, No. 4:95CR3054, 2010WL489534 (D.Neb. February 8, 2010).

This Court has previously determined that: (1) audita querela is not available to petitioner because his claims would be cognizable under § 2255, (2) Carachuri-Rosendo v. Holder, 130 S.Ct. 2577 (2010) does not apply retroactively on collateral review and (3) petitioner cannot use audita querela as a mechanism for circumventing the rules governing § 2255 cases or the Supreme Court's retroactivity rules. This Court sees no reason to reverse its earlier opinion.

Accordingly,

IT IS HEREBY ORDERED that petitioner's motion for reconsideration is **DENIED**.

So Ordered this 25th day of April, 2013.



E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE